

## REMARKS

In the Official Action of August 27, 2002, Claims 1 and 28-54 were pending in the Application. Claims 1, 28-30, 35-37, 39, 41-44, 46-48 and 51-54 were rejected under 35 U.S.C. §102 and §103. The remaining claims, 31-34, 38, 40, 45, 49 and 50 were withdrawn for consideration as being directed to a non-elected group of claims in the restriction requirement.

Claims 55-80 submitted herewith correspond, in general, to the claims previously submitted in the Application except for Claim 1 and Claim 27, the latter claim having, in effect, been incorporated in Claim 55.

The invention is directed to an implement for demarcating and area within which the freedom of movement of animals is otherwise provided. This is accomplished by a wire section 12 which may be electrified and which is connected between two or more of the implements. Each implement comprises a vehicle which is used for positioning an end of a section. The vehicle has two wheels on either side with the center of gravity of the vehicle being lower than the axis of rotation of the wheels. The wire which comprises the section is wound on a drum. The apparatus may be provided with a geodetic positioning system, such as, for example, GPS. For each vehicle 1 a computer may be provided which is programmed so that the vehicles move to predetermined positions at predetermined points of time according to a predetermined pattern.

Insofar as the new claims are concerned, Claims 55-57, 62-64, 66, 68-77, 73, 74 and 77-80 correspond to the claims which were acted on in the Official Action of August 27, 2002.

In the Official Action, all claims except Claims 41, 52 and 54 were rejected under 35 U.S.C. §102 as being anticipated by the German Patent DE 4215714, to Schulte, which is dated November 18, 1993. The web translation of this patent which we have is practically useless. However, according to an abstract a grazing enclosure is mounted by stationary fences on three sides of a rectangle with the fourth side being a moveable wire supported by two self-propelled

tracked vehicles following parallel paths. The wire is fixed to two cross beams at the tops of respective jointed posts equipped with a tilt switch whereby the post are held upright on uneven ground. One vehicle only carries a time motor and the wire is reeled and unreeled by winders. It provides an advantage of being a traveling fence which is adapted automatically to differences of distance between stationary fences and to unevenness of ground so that the livestock cannot escape.

In the instant Amendment, Claim 55 which corresponds in general to prior Claim 28 sets forth that the vehicle includes a geodetic positioning system for selectively positioning the end of said section of the demarcation element. Claim 80 which corresponds in general to prior Claim 54 also includes the geodetic positioning system. Such positioning system is, of course, a system which includes GPS or the like. Insofar as can be determined, the Shulte reference does not include a geodetic positioning system at all. Accordingly, the rejection under 35 U.S.C. §102 is flawed because such rejections must be based on an element-by-element anticipation in a single reference.

The rejections of Claims 41, 52 and 54 under 35 U.S.C. §103 utilize the Schulte reference as the primary reference in combination with other references and therefore must suffer the same fate as the claims rejected on the basis of 35 U.S.C. §102. Incidentally, in the Official Action, it is stated that as to Claim 47, the Shulte reference discloses an apparatus which comprises a positioning position (12, 10, 17 and 18). However, this seems to be directed to parts of the Schulte apparatus which cause the caterpillar tracks to be turned and is not a geodetic positioning system as disclosed in the instant Application.

Concerning the restriction requirement, Applicant requests reconsideration thereof. As the Patent Examiner must appreciate, the statutory basis for restriction requirements is that the inventions be "independent and distinct." See 35 U.S.C. §121. Although it is not believed that

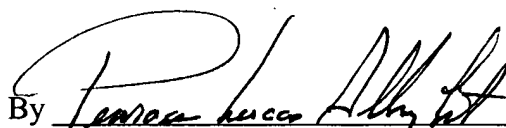
different "species" as that term is normally used in the English language are involved in the instant Application, further comments concerning same would be tilting at windmills. "Species" is not the statutory standard; "independent and distinct" is. By the same token, the question of patentability is to be determined under 35 U.S.C. §102 and §103 and, accordingly, no statutory basis is provided for the last two sentences on page 2 of the Official Action.

Further consideration and reexamination of this Application, in its amended form, is requested in view of 35 U.S.C. §132 and regulations in implementation thereof. It is submitted the Application in its amended form is free from ambiguity and avoids the references of record. It is further submitted the Examiner should have no difficulty in finding that the differences between the subject matter sought to be patented in this Application and prior art and usage within his expert knowledge are such that the subject matter as a whole would not have been obvious at the time the invention was made to persons having ordinary skill in the art to which the subject matter of this Application pertains.

In view of the foregoing, the allowance of claims as now presented is earnestly solicited.

Respectfully submitted,

MASON, MASON & ALBRIGHT

By   
Penrose Lucas Albright  
Registration No. 19,082

2306 South Eads Street  
P.O. Box 2246  
Arlington, VA 22202  
Tel (703) 979-3242  
Fax (703) 979-2526

**Filed: February 27, 2003**

8553/221